

(i) Any CSAPR NO<sub>x</sub> Annual allowances that were recorded in the compliance account pursuant to § 97.421 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other CSAPR NO<sub>x</sub> Annual allowances that were transferred to and recorded in the compliance account pursuant to this subpart, in the order of recordation.

(d) *Deductions for excess emissions.* After making the deductions for compliance under paragraph (b) of this section for a control period in a year in which the CSAPR NO<sub>x</sub> Annual source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CSAPR NO<sub>x</sub> Annual allowances, allocated or auctioned for a control period in a prior year or the control period in the year of the excess emissions or in the immediately following year, equal to two times the number of tons of the source's excess emissions.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74607, Oct. 26, 2016]

**§ 97.425 Compliance with CSAPR NO<sub>x</sub> Annual assurance provisions.**

(a) *Availability for deduction.* CSAPR NO<sub>x</sub> Annual allowances are available to be deducted for compliance with the CSAPR NO<sub>x</sub> Annual assurance provisions for a control period in a given year by the owners and operators of a group of one or more CSAPR NO<sub>x</sub> Annual sources and units in a State (and Indian country within the borders of such State) only if the CSAPR NO<sub>x</sub> Annual allowances:

(1) Were allocated or auctioned for a control period in a prior year or the control period in the given year or in the immediately following year; and

(2) Are held in the assurance account, established by the Administrator for such owners and operators of such group of CSAPR NO<sub>x</sub> Annual sources and units in such State (and Indian country within the borders of such State) under paragraph (b)(3) of this

section, as of the deadline established in paragraph (b)(4) of this section.

(b) *Deductions for compliance.* The Administrator will deduct CSAPR NO<sub>x</sub> Annual allowances available under paragraph (a) of this section for compliance with the CSAPR NO<sub>x</sub> Annual assurance provisions for a State for a control period in a given year in accordance with the following procedures:

(1) By June 1, 2018 and June 1 of each year thereafter, the Administrator will:

(i) Calculate, for each State (and Indian country within the borders of such State), the total NO<sub>x</sub> emissions from all CSAPR NO<sub>x</sub> Annual units at CSAPR NO<sub>x</sub> Annual sources in the State (and Indian country within the borders of such State) during the control period in the year before the year of this calculation deadline and the amount, if any, by which such total NO<sub>x</sub> emissions exceed the State assurance level as described in § 97.406(c)(2)(iii); and

(ii) Promulgate a notice of data availability of the results of the calculations required in paragraph (b)(1)(i) of this section, including separate calculations of the NO<sub>x</sub> emissions from each CSAPR NO<sub>x</sub> Annual source.

(2) For each notice of data availability required in paragraph (b)(1)(ii) of this section and for any State (and Indian country within the borders of such State) identified in such notice as having CSAPR NO<sub>x</sub> Annual units with total NO<sub>x</sub> emissions exceeding the State assurance level for a control period in a given year, as described in § 97.406(c)(2)(iii):

(i) By July 1 immediately after the promulgation of such notice, the designated representative of each CSAPR NO<sub>x</sub> Annual source in each such State (and Indian country within the borders of such State) shall submit a statement, in a format prescribed by the Administrator, providing for each CSAPR NO<sub>x</sub> Annual unit (if any) at the source that operates during, but is not allocated an amount of CSAPR NO<sub>x</sub> Annual allowances for, such control period, the unit's allowable NO<sub>x</sub> emission rate for such control period and, if such rate is expressed in lb per mmBtu, the unit's heat rate.

(ii) By August 1 immediately after the promulgation of such notice, the Administrator will calculate, for each such State (and Indian country within the borders of such State) and such control period and each common designated representative for such control period for a group of one or more CSAPR NO<sub>x</sub> Annual sources and units in the State (and Indian country within the borders of such State), the common designated representative's share of the total NO<sub>x</sub> emissions from all CSAPR NO<sub>x</sub> Annual units at CSAPR NO<sub>x</sub> Annual sources in the State (and Indian country within the borders of such State), the common designated representative's assurance level, and the amount (if any) of CSAPR NO<sub>x</sub> Annual allowances that the owners and operators of such group of sources and units must hold in accordance with the calculation formula in § 97.406(c)(2)(i) and will promulgate a notice of data availability of the results of these calculations.

(iii) The Administrator will provide an opportunity for submission of objections to the calculations referenced by the notice of data availability required in paragraph (b)(2)(ii) of this section and the calculations referenced by the relevant notice of data availability required in paragraph (b)(1)(ii) of this section.

(A) Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations referenced in the relevant notice required under paragraph (b)(1)(ii) of this section and referenced in the notice required under paragraph (b)(2)(ii) of this section are in accordance with § 97.406(c)(2)(iii), §§ 97.406(b) and 97.430 through 97.435, the definitions of "common designated representative", "common designated representative's assurance level", and "common designated representative's share" in § 97.402, and the calculation formula in § 97.406(c)(2)(i).

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(2)(iii)(A) of this section. By October 1 immediately after the promulgation of such notice, the Administrator will promulgate a notice of data

availability of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(iii)(A) of this section.

(3) For any State (and Indian country within the borders of such State) referenced in each notice of data availability required in paragraph (b)(2)(iii)(B) of this section as having CSAPR NO<sub>x</sub> Annual units with total NO<sub>x</sub> emissions exceeding the State assurance level for a control period in a given year, the Administrator will establish one assurance account for each set of owners and operators referenced, in the notice of data availability required under paragraph (b)(2)(iii)(B) of this section, as all of the owners and operators of a group of CSAPR NO<sub>x</sub> Annual sources and units in the State (and Indian country within the borders of such State) having a common designated representative for such control period and as being required to hold CSAPR NO<sub>x</sub> Annual allowances.

(4)(i) As of midnight of November 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii)(B) of this section, the owners and operators described in paragraph (b)(3) of this section shall hold in the assurance account established for them and for the appropriate CSAPR NO<sub>x</sub> Annual sources, CSAPR NO<sub>x</sub> Annual units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section a total amount of CSAPR NO<sub>x</sub> Annual allowances, available for deduction under paragraph (a) of this section, equal to the amount such owners and operators are required to hold with regard to such sources, units and State (and Indian country within the borders of such State) as calculated by the Administrator and referenced in such notice.

(ii) Notwithstanding the allowance-holding deadline specified in paragraph (b)(4)(i) of this section, if November 1 is not a business day, then such allowance-holding deadline shall be midnight of the first business day thereafter.

(5) After November 1 (or the date described in paragraph (b)(4)(ii) of this

section) immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii)(B) of this section and after the recordation, in accordance with § 97.423, of CSAPR NO<sub>x</sub> Annual allowance transfers submitted by midnight of such date, the Administrator will determine whether the owners and operators described in paragraph (b)(3) of this section hold, in the assurance account for the appropriate CSAPR NO<sub>x</sub> Annual sources, CSAPR NO<sub>x</sub> Annual units, and State (and Indian country within the borders of such State) established under paragraph (b)(3) of this section, the amount of CSAPR NO<sub>x</sub> Annual allowances available under paragraph (a) of this section that the owners and operators are required to hold with regard to such sources, units, and State (and Indian country within the borders of such State) as calculated by the Administrator and referenced in the notice required in paragraph (b)(2)(iii)(B) of this section.

(6) Notwithstanding any other provision of this subpart and any revision, made by or submitted to the Administrator after the promulgation of the notice of data availability required in paragraph (b)(2)(iii)(B) of this section for a control period in a given year, of any data used in making the calculations referenced in such notice, the amounts of CSAPR NO<sub>x</sub> Annual allowances that the owners and operators are required to hold in accordance with § 97.406(c)(2)(i) for such control period shall continue to be such amounts as calculated by the Administrator and referenced in such notice required in paragraph (b)(2)(iii)(B) of this section, except as follows:

(i) If any such data are revised by the Administrator as a result of a decision in or settlement of litigation concerning such data on appeal under part 78 of this chapter of such notice, or on appeal under section 307 of the Clean Air Act of a decision rendered under part 78 of this chapter on appeal of such notice, then the Administrator will use the data as so revised to recalculate the amounts of CSAPR NO<sub>x</sub> Annual allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.406(c)(2)(i) for such control period

with regard to the CSAPR NO<sub>x</sub> Annual sources, CSAPR NO<sub>x</sub> Annual units, and State (and Indian country within the borders of such State) involved, provided that such litigation under part 78 of this chapter, or the proceeding under part 78 of this chapter that resulted in the decision appealed in such litigation under section 307 of the Clean Air Act, was initiated no later than 30 days after promulgation of such notice required in paragraph (b)(2)(iii)(B) of this section.

(ii) If any such data are revised by the owners and operators of a CSAPR NO<sub>x</sub> Annual source and CSAPR NO<sub>x</sub> Annual unit whose designated representative submitted such data under paragraph (b)(2)(i) of this section, as a result of a decision in or settlement of litigation concerning such submission, then the Administrator will use the data as so revised to recalculate the amounts of CSAPR NO<sub>x</sub> Annual allowances that owners and operators are required to hold in accordance with the calculation formula in § 97.406(c)(2)(i) for such control period with regard to the CSAPR NO<sub>x</sub> Annual sources, CSAPR NO<sub>x</sub> Annual units, and State (and Indian country within the borders of such State) involved, provided that such litigation was initiated no later than 30 days after promulgation of such notice required in paragraph (b)(2)(iii)(B) of this section.

(iii) If the revised data are used to recalculate, in accordance with paragraphs (b)(6)(i) and (ii) of this section, the amount of CSAPR NO<sub>x</sub> Annual allowances that the owners and operators are required to hold for such control period with regard to the CSAPR NO<sub>x</sub> Annual sources, CSAPR NO<sub>x</sub> Annual units, and State (and Indian country within the borders of such State) involved—

(A) Where the amount of CSAPR NO<sub>x</sub> Annual allowances that the owners and operators are required to hold increases as a result of the use of all such revised data, the Administrator will establish a new, reasonable deadline on which the owners and operators shall hold the additional amount of CSAPR NO<sub>x</sub> Annual allowances in the assurance account established by the Administrator for the appropriate CSAPR

**§ 97.426**

NO<sub>x</sub> Annual sources, CSAPR NO<sub>x</sub> Annual units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section. The owners' and operators' failure to hold such additional amount, as required, before the new deadline shall not be a violation of the Clean Air Act. The owners' and operators' failure to hold such additional amount, as required, as of the new deadline shall be a violation of the Clean Air Act. Each CSAPR NO<sub>x</sub> Annual allowance that the owners and operators fail to hold as required as of the new deadline, and each day in such control period, shall be a separate violation of the Clean Air Act.

(B) For the owners and operators for which the amount of CSAPR NO<sub>x</sub> Annual allowances required to be held decreases as a result of the use of all such revised data, the Administrator will record, in all accounts from which CSAPR NO<sub>x</sub> Annual allowances were transferred by such owners and operators for such control period to the assurance account established by the Administrator for the appropriate CSAPR NO<sub>x</sub> Annual sources, CSAPR NO<sub>x</sub> Annual units, and State (and Indian country within the borders of such State) under paragraph (b)(3) of this section, a total amount of the CSAPR NO<sub>x</sub> Annual allowances held in such assurance account equal to the amount of the decrease. If CSAPR NO<sub>x</sub> Annual allowances were transferred to such assurance account from more than one account, the amount of CSAPR NO<sub>x</sub> Annual allowances recorded in each such transferor account will be in proportion to the percentage of the total amount of CSAPR NO<sub>x</sub> Annual allowances transferred to such assurance account for such control period from such transferor account.

(C) Each CSAPR NO<sub>x</sub> Annual allowance held under paragraph (b)(6)(iii)(A) of this section as a result of recalculation of requirements under the CSAPR NO<sub>x</sub> Annual assurance provisions for such control period must be a CSAPR NO<sub>x</sub> Annual allowance allocated for a control period in a year before or the year immediately following, or in the

**40 CFR Ch. I (7–1–19 Edition)**

same year as, the year of such control period.

[76 FR 48379, Aug. 8, 2011, as amended at 77 FR 10336, Feb. 21, 2012; 79 FR 71672, Dec. 3, 2014; 81 FR 74607, Oct. 26, 2016]

**§ 97.426 Banking.**

(a) A CSAPR NO<sub>x</sub> Annual allowance may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CSAPR NO<sub>x</sub> Annual allowance that is held in a compliance account or a general account will remain in such account unless and until the CSAPR NO<sub>x</sub> Annual allowance is deducted or transferred under § 97.411(c), § 97.423, § 97.424, § 97.425, § 97.427, or § 97.428.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74607, Oct. 26, 2016]

**§ 97.427 Account error.**

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any Allowance Management System account. Within 10 business days of making such correction, the Administrator will notify the authorized account representative for the account.

**§ 97.428 Administrator's action on submissions.**

(a) The Administrator may review and conduct independent audits concerning any submission under the CSAPR NO<sub>x</sub> Annual Trading Program and make appropriate adjustments of the information in the submission.

(b) The Administrator may deduct CSAPR NO<sub>x</sub> Annual allowances from or transfer CSAPR NO<sub>x</sub> Annual allowances to a compliance account or an assurance account, based on the information in a submission, as adjusted under paragraph (a) of this section, and record such deductions and transfers.

[76 FR 48379, Aug. 8, 2011, as amended at 81 FR 74607, Oct. 26, 2016]